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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/722,878 | 11/27/2000 | Eric Christian Hince | | 6077 |

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EXAMINER

MEDLEY, MARGARET B

| ART UNIT | PAPER NUMBER |
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1714

DATE MAILED: 10/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/722,878

Applicant(s)

HINCE, ERIC CHRISTIAN

Examiner

Margaret B. Medley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 19, 20, 34-36 and 39-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 21-34 and 37-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

DETAILED ACTION

This application contains claims 19-20, 35-36 and 39-47 drawn to an invention non-elected with traverse in Paper No. 5. A complete reply to the final rejection must include cancellation of non-elected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Applicant's election with traverse of Group II and III in Paper No. 5 is acknowledged. The traversal is on the ground(s) that the composition defined by the claims 19-20 differs from claims 2-18 (1-18) in that claims 19 and 20 additional comprises a source (i.e. "inoculum") of "biological organisms including microorganisms and fungi, but is considered as variants; and that claims 35 and 36 differs from claims 22-34 (21-34) in that claims 35 and 36 additional comprises a source (i.e. "inoculum") of "biological organisms including microorganisms and fungi, but is considered as variants. This is not found persuasive because of the reason set forth in Paper No. 4 dated July 2, 2002 and applicants admission made in paragraph 2 of page 14 and paragraph 2 of page 15 in Paper No. 5 dated August 1, 2002 that the claims differ by the inclusion of microorganisms in the composition of claims 19-20 and 35-36.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 14, 37-38 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

OK Claims 14 and 31 are indefinite and confessing in that the phrase "inorganic binders" is in conflict with the disclosure at page 15, line 8 that the Markush grouping selection is from inorganic binders, fillers and buffers. Claims 37-38 are indefinite and

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confusing in that claims 19-20 and 35-36 directed to the non-elected invention are required to be canceled.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 13-14, and 37-38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gago 4,470,839.

Gago teaches and discloses solid particles containing calcium peroxides and hexametaphosphate, sodium carbonate buffer, and acid hydrogen peroxide that anticipate the instant claims; and example 1 and claims 1-4 that anticipates the instant claimed composition.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 7-8, 13-14, 17-18, and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gago 4, 470,839.

Gago teaches and discloses solid particles composition containing calcium peroxide and complex inorganic phosphates, column 2, lines 17-21, including mixture of said complex phosphates, column 2, lines 65-68 and 33-41 and provides for the inclusion of inorganic simple phosphates, column 3, lines 20-23, inorganic buffers of carbonates column 3, lines 17-21, and a lubricant of talc, column 3, line 51 that renders the instant claims obvious.

Claims 5, 11-12 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gago 4,470,839 as applied to claims 1-4, 7-8, 13-14, 17-18 and 37-38 above, and further in view of Felix et al 5,725,885.

Applicants further claim a source of inorganic nitrogen from a nitrate grouping, inorganic disintegrant selected from clays, ferrous metal catalyst and lubricant selected from stearic acid, metal salts thereof, etc. It would have been obvious to the artisan in the art that Gago provides for the inclusion of the additives of Felix in its solid composition by the inclusion of stabilizers and fillers, column 3, lines 39-43 and 50-54.

Felix teaches and discloses particulate material comprising stearic acid lubricant, see the bridging paragraph of columns 2-4, ammonium sulfate, urea or combination thereof, column 3, lines 51-53, silica clay, column 5, lines 49-50 and 65, and ferrous sulphate, column 3, lines 51-53 for their attendant functions providing the motivation to add said additives to the solid particle composition of Gago for the same attendant functions that the instant claims are obvious. The use of the additives as a Markush grouping in several of the dependent instant claims suggest to the one of ordinary skill in the art that additive are function equivalent for the same attendant function in a solid composition.

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Claims 6, 9-10 and 21-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gago 4,470,839 in view of Felix et al (Felix) 5,725,885 as applied to claims 1-5, 7-8, 11-18 and 37-38 above, and further in view of Fusey 3,796,637 and Gaffar et al 5,648,064.

Applicant further claims a source of nitrogen derived from nitrate and an organic disintegrant selected from starched and sugars wherein the relied on prior art is silent to said teachings. It is the position of the examiner that Gago provides for the inclusion of the additives of Fusey in its solid composition by the inclusion of stabilizers and fillers, column 3, lines 39-43 and 50-54.

Fusey teaches and discloses composition comprising nitrogen sources selected from urea, ammonium phosphate, ammonium nitrate, etc, column 2, lines 22-25 and molasses or other sugar and/or starch material, column 2, lines 17-18 along with simple phosphate and inorganic components, metal oxides and stearic acid, column 1, line 53 to column 2, lines 25 for their attendant function in a composition that render obvious the instant claims.

It would have been obvious to one of ordinary in the art to use molasses in a Markush grouping with sugar and starches. The combination additives of the secondary references teach that the additives of the instant claims are functional equivalent for the same attendant function in the composition of Gago. Gaffer further provides teachings that starches and cellulose have the same property as a thickening agent in a composition further supporting the examiner's position that the sugars, cellulose material, sugars and starches are functional equivalent. It is the examiner's position that the starch of Gaffer includes the pre-gelled- starch of claims 21-34 further rendering the instant claims obvious.

Instant claims 21-34 limitations are disclosed by the combination of teachings of the secondary references with the teachings of Gago to include calcium peroxide with its condensed phosphate mixture along with conventional additives for their attendant functional use and render the instant claims obvious.

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The prior art cited but not applied further teaches solid compositions and compositions comprising additives and components of the same nature as claimed by applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is (703) 308-2518. The examiner can normally be reached on Monday-Friday from 7:30 a.m. to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


MARGARET MEDLEY
PRIMARY EXAMINER

Medely/sp

October 2, 2002